

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Art Unit: 1648
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PEDERSEN, et al.) Examiner: PENG, B.
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Serial No.: 10/514,626) Washington, D.C.
)
Filed: June 23, 2005) November 29, 2007
)
For: A PURIFIED POLYPEPTIDE,) Docket No.: PEDERSEN=10
ISOLATED NUCLEIC ACIDS)
ENCODING SAID...) Confirmation No.: 7989

ELECTION WITH PARTIAL TRAVERSE

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S i r :

In response to the restriction requirement mailed October 5, 2007, applicants respond as follows.

1. Applicants elect group I, without traverse. Claim 28 has been amended to depend from claim 27 and hence should be classified in group I.

2. In response to the species restriction of OA §8, Applicants elect species (1) with traverse. Traverse is on ground that a generic claim is allowable. Also, it is not clear to us how the examiner is differentiating species (1)-(3).

3. In response to the species restriction of OA §11, Applicants elect the polypeptide sequence SEQ ID NO:2 wherein at position 212 a substitution to methionine has been introduced (see claim 9), with traverse on grounds that a generic claim is allowable.

4. Both species restrictions are further traversed on the ground that PCT unity rules apply and under PCT Administrative Instructions, Annex B, a species restriction is proper only after a showing of a posteriori lack of unity has been made, i.e., prior art is cited as showing that the generic claims are anticipated or obvious. Since no prior art is cited, there is

no prima facie basis to make a PCT species restriction.

5. In OA §10 the Examiner concedes that all claims are generic to the first species restriction except claim 18. (Claim 18 is directed to nucleic acid and the species restriction requires election of a polypeptide.) However in OA §8, in the identification of species (1), the Examiner refers to claims 1, 4 and 6-10. We believe that claims 1-4 and 6-16 read on the elected species (1).

6. Claims 1, 4, and 6-10 read on the polypeptide elected in response to the second species restriction. Claim 18 is directed to the nucleic acid of SEQ ID NO:1, which encodes SEQ ID NO:2. However, our elected polypeptide is not SEQ ID NO:2 itself, but rather a mutant thereof (R212M). Hence claim 18 does not read on the elected species.

Respectfully submitted,

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